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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

WMCV PHASE 3, LLC, a Delaware limited  
liability company,

Case No.: 2:10-cv-00661-GMN-RJJ

Plaintiff,

vs.

SHUSHOK & MCCOY, INC., a Texas  
corporation; MATTHEW J. TRAVIS, an  
individual; MATT TURNER, an individual;  
RICHARD BIRDWELL, an individual;  
GLOBAL ACCENTS, INC., a California  
corporation; COUTURE INTERNATIONAL,  
INC., a Quebec corporation; DOES I through X,  
inclusive; ROE ENTITIES I through X,  
inclusive,

Defendants.

**ANSWER TO COUTURE INTERNATIONAL, INC.'S COUNTERCLAIM**

Plaintiff, WMCV PHASE 3, LLC (hereinafter "Counter-Defendant"), by and through its  
attorneys of record, the law firm of Marquis Aurbach Coffing, hereby responds to  
Counterclaimant, Couture International, Inc.'s Counterclaim as follows:

1. With respect to Paragraph 1 of the Counterclaim, Counter-Defendant admits that:  
(1) WMCV began leasing space to Couture International, Inc. in May 2007; (2) in August 2008  
Couture International, Inc. failed to pay rent, which resulted a dispute wherein Couture

1 International, Inc. was evicted in 2008; and (3) since the eviction WMCV has leased additional  
2 space to Couture International, Inc. Counter-Defendant denies each and every remaining factual  
3 allegation contained Paragraph 1 of the Counterclaim.

4 2. With respect to Paragraphs 2, 14, 15, 16, 18, 19, 20, 21, 22, 26, 27, 28, 31, 32, 33,  
5 and 37 in the Counterclaim, Counter-Defendant denies each and every allegation contained  
6 therein.

7 3. With respect to Paragraphs 3, 24, 25, 30, and 35 in the Counterclaim, Counter-  
8 Defendant states those Paragraphs are Statements of Law, which do not require an admission or  
9 denial, and to the extent they contain any factual allegations, Counter-Defendant denies each and  
10 every allegation contained therein.

11 4. With respect to Paragraphs 4, 11, 12, and 13 in the Counterclaim, Counter-  
12 Defendant states that it does not have sufficient knowledge or information upon which to base a  
13 belief as to the truth or falsity of the allegations contained therein and upon set grounds denies  
14 each and every allegation contained therein.

15 5. With respect to Paragraphs 5, 6, 7, 9, 10, and 36 in the Counterclaim, Counter-  
16 Defendant admits each and every allegation contained therein.

17 6. With respect to Paragraph 8 of the Counterclaim, Counter-Defendant admits that  
18 Couture International, Inc. failed to pay rent in August 2008, which resulted in a dispute between  
19 Couture International, Inc. and Counter-Defendant.

20 7. With respect to *the first* Paragraph 17 of the Counterclaim, Counter-Defendant  
21 admits that Couture International, Inc. has had additional business relationships with Counter-  
22 Defendant and has rented space from Counter-Defendant since being evicted and denies each  
23 and every other factual allegation contained therein.

24 8. With respect to *the second* Paragraph 17 of the Counterclaim, Counter-Defendant  
25 repeats and realleges its responses to Paragraphs 1 through the first Paragraph 17 in the  
26 Counterclaim.

27 9. With respect to Paragraph 23 of the Counterclaim, Counter-Defendants repeats  
28 and realleges its responses to Paragraphs 1 through 22 of the Counterclaim.

10. With respect to Paragraph 29 of the Counterclaim, Counter-Defendant repeats and realleges its responses to Paragraphs 1 through 28 of the Counterclaim.

11. With respect to Paragraph 34 of the Counterclaim, Counter-Defendant repeats and realleges its responses to Paragraphs 1 through 33 of the Counterclaim.

12. Any other factual allegation in the Counterclaim not specifically addressed herein is denied.

### **AFFIRMATIVE DEFENSES**

#### **First Affirmative Defense**

Counter-Defendant is not a party to the contract and, accordingly, is not in breach of contract.

#### **Second Affirmative Defense**

The claim for breach of contract is barred as a result of the Counterclaimant's failure to satisfy conditions precedent.

#### **Third Affirmative Defense**

Counter-Defendant did not have knowledge of any valid contract between Counterclaimant and Counter-Defendant.

#### **Fourth Affirmative Defense**

The contract upon which Counterclaimant bases its claims is void for lack of consideration.

#### **Fifth Affirmative Defense**

The contract upon which Counterclaimant's claims are based is not a valid contract between Counter-Defendant and Counterclaimant.

#### **Sixth Affirmative Defense**

Counter-Defendant acted in and dealt in good faith with Counterclaimant.

#### **Seventh Affirmative Defense**

Counterclaimant knew or should have that the contract upon which its claims are based was not between Counterclaimant and Counter-Defendant.

**Eighth Affirmative Defense**

Counter-Defendant made no representations of material fact to Counterclaimant which Counter-Defendant knew or believed to be false.

**Ninth Affirmative Defense**

Counter-Defendant had no intent to defraud Counterclaimant.

**Tenth Affirmative Defense**

Counter-Defendant failed to state a claim upon which relief may be granted.

**Eleventh Affirmative Defense**

Pursuant to Federal Rule of Civil Procedure 11 all possible affirmative defenses may not have been alleged herein as sufficient facts were not available for responding party after reasonable inquiry upon the filing of answering Counter-Defendant's Answer to Counterclaimant's Counterclaim, and therefore Counter-Defendant reserves the right to amend its Answer to allege additional affirmative defenses, if subsequent investigation so warrants.

WHEREFORE, Counter-Defendant requests relief and a prayer for Judgment against Counterclaimant as follows:

1. That Counterclaimant take nothing by virtue of its Counterclaim;
2. For Counterclaimant's claims against Counter-Defendant to be dismissed with prejudice;
3. For attorney fees and costs incurred herein; and
4. For such other and further relief as the Court deems just, equitable and proper.

Dated this 21<sup>st</sup> day of June, 2011.

MARQUIS & AURBACH

By 

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**CERTIFICATE OF SERVICE**

In accordance with Fed. R. Civ. P. 5, I hereby certify that on the 21<sup>st</sup> day of June, 2011, I served a copy of the foregoing **ANSWER TO COUTURE INTERNATIONAL, INC.'S COUNTERCLAIM**, upon each of the parties via CM-ECF filing:

Gary E. Schnitzer, Esq.  
Michael B. Lee, Esq.  
KRAVITZ SCHNITZER SLOANE &  
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Matt Turner  
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2637 Ira E. Woods, Suite 100  
Grapevine, TX 76051

Richard Birdwell  
2804 Red Wolf Drive  
Fort Worth, TX 76244

Additionally, I hereby certify that on the 21<sup>st</sup> day of June, 2011, I served a copy of the foregoing **ANSWER TO COUTURE INTERNATIONAL, INC.'S COUNTERCLAIM** upon the following PRO SE parties by depositing a copy of the same in a sealed envelope in the United States Mail, Las Vegas, Nevada, First-Class Postage fully prepaid, and addressed to:

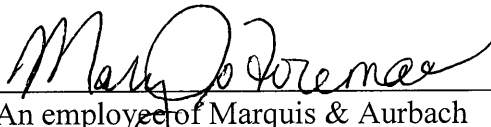
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and that there is a regular communication by mail between the place of mailing and the places so addressed.

  
An employee of Marquis & Aurbach